



## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Parts 1005 and 1007**

**[Docket No. AO-388-A17 and AO-366-A46; DA-05-06-B]**

#### **Milk in the Appalachian and Southeast Marketing Areas; Termination of Proceeding**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Termination of proceeding.

**SUMMARY:** This action terminates a proceeding for two remaining proposals presented at a hearing held in Louisville, Kentucky, January 10-12, 2006. The two proposals (Proposal 2 and Proposal 5) would: establish intra-market transportation credit provisions for the Appalachian and Southeast Federal milk marketing areas, and reduce payments to producers for milk diverted to locations outside of the geographic boundaries of the Appalachian and Southeast milk marketing areas. The Agricultural Marketing Service believes that the amendments adopted as part of a subsequent proceeding addressed the disorderly marketing conditions that Proposals 2 and 5 were designed to remedy, and therefore action on the proceedings for these two proposals is terminated.

**DATES:** This termination is made on May 5, 2013.

**FOR FURTHER INFORMATION CONTACT:** William Francis, Director, Order Formulation and Enforcement Division, USDA/AMS/Dairy Programs, Stop 0231-Room 2971, 1400 Independence Avenue, SW Washington, DC 20250-0231, (202) 720 - 7183, e-mail: [william.francis@ams.usda.gov](mailto:william.francis@ams.usda.gov).

#### **SUPPLEMENTARY INFORMATION:**

**Executive Orders 12866 and 13563**

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Orders 12866 and 13563.

#### **Executive Order 12988**

This termination has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. The Agricultural Marketing Agreement Act of 1937, as amended (Act)(7 U.S.C. 601-674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the U.S. Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

#### **Executive Order 13175**

This termination has been reviewed in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this

regulation will not have substantial and direct effects on Tribal Governments and will not have significant Tribal implications.

### **Regulatory Flexibility Act and Paperwork Reduction Act**

As part of the proceedings conducted for this rulemaking, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601-612) and the Paperwork Reduction Act of 1995 (Pub. L. 104-13) were considered. Because this action terminates the underlying rulemaking proceeding, the economic conditions of small entities are not changes as a result of this action, nor have any compliance requirements changed. Also, this action does not provide for any new or changed reporting and recordkeeping requirements.

### **Prior Documents in This Proceeding:**

Notice of Hearing: Issued December 22, 2005; published December 28, 2005 (70 FR 76718).

Partial Tentative Decision: Issued September 1, 2006; published September 13, 2006 (71 FR 54118).

Partial Interim Rule: Issued October 19, 2006; published October 25, 2006 (71 FR 62377).

Partial Final Decision: Issued February 25, 2014; published March 7, 2014 (79 FR 12985).

### **Preliminary Statement**

A public hearing was held January 10-12, 2006, in Louisville, Kentucky, with respect to proposed amendments to the tentative marketing agreement and to the orders regulating the handling of milk in the Appalachian and Southeast marketing areas.

The hearing was called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). The purpose of the hearing was to receive evidence with respect to the economic and marketing conditions that relate to the proposed amendments to the tentative marketing agreements and to the orders.

This decision terminates the proceeding specifically in regards to Proposal 2, which would establish a new transportation credit balancing fund on the intra-market movements of milk within the marketing areas, and Proposal 5, which would reduce the amount paid to a producer for milk diverted to locations outside of the marketing areas.

Other proposals discussed at the hearing (Proposal 1, 3 and 4) would make other adjustments to the transportation credit provisions of the two orders. Those proposals were addressed in a separate Final Decision (79 FR 12985).

At the hearing, witnesses testified to the inadequacy of the Class I price surface and the related difficulties in attracting adequate milk to meet fluid milk demands. This was the underlying disorderly marketing condition that led to the initial proposals to adjust transportation credit and pooling provisions. Witnesses stated that a separate rulemaking proceeding should be held to review the appropriate Class I differential levels in the southeastern marketing areas.

Accordingly, the Department held another hearing from May 21-23, 2007, (72 FR

25986)<sup>1</sup> in Tampa, Florida, to address, among other things, the adequacy of the Class I differential levels in the southeastern marketing areas, and additional changes to the transportation credit balancing fund that would provide for additional transportation cost recovery for milk meeting the order's fluid needs.

An interim final rule was published on March 17, 2008, (73 FR 14153) that adjusted the Class I price surface for each county within the Appalachian, Florida and Southeast marketing orders. In that interim final rule, the Department decided to increase blend prices through adjustments to the Class I differentials to assist in compensating producers for higher transportation costs. In addition, more stringent pooling standards and other adjustments to the transportation credit provisions were adopted to ensure that milk pooled on the southeastern orders was adequately servicing the market's fluid needs. These amendments included: 1) extending the number of months in which transportation credit balancing funds are paid (July through December) to include the months of January and February, with the option of the month of June if requested and approved by the Market Administrator; 2) expanding the payment of transportation credits for supplemental milk to include the entire load of milk rather than the calculated Class I utilization; 3) providing more flexibility in the qualification requirements for supplemental milk producers to receive transportation credits; and 4) increasing the monthly transportation credit assessment rate from \$0.20 per cwt to \$0.30 per cwt. for the Southeast order. A final rule in this related proceeding (79 FR 12963) is being issued simultaneously with this termination of proceeding making these adjustments permanent in the Appalachian and Southeast orders.

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<sup>1</sup> Official Notice is taken of this proceeding (72 FR 25986).

The Department believes that the amendments adopted as part of this subsequent proceeding addressed the disorderly marketing conditions that Proposals 2 and 5 were designed to remedy.

**Termination of Proceeding**

In view of the foregoing, it is hereby determined that subsequent rulemaking proceedings have addressed the disorderly marketing conditions that Proposals 2 and 5 were designed to remedy. Accordingly, the proceeding is terminated.

**List of Subjects in 7 CFR Parts 1005 and 1007**

Milk marketing orders.

Dated: April 28, 2014

Rex A. Barnes

Associate Administrator

Agricultural Marketing Service

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